

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAFAEL GODINEZ,

Plaintiff,

No. CIV S-03-1273 WBS DAD P

v.

JAMES GOMEZ, et al., ORDER

Defendants.

Plaintiff, Rafael Godinez, is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff's complaint was filed on June 13, 2003. By order dated July 11, 2003, plaintiff was assessed a filing fee of \$150.00 pursuant to 28 U.S.C. § 1915. Judgment was entered on April 13, 2004. On April 29, 2004, plaintiff filed an appeal, for which he was assessed another filing fee.

Pending before the court is plaintiff's December 15, 2010 motion "for modification of filing fee pursuant to 28 U.S.C.A. § 1915(2)(b)." Therein, plaintiff alleges that the Clerk of the Court has overcharged his prison trust account in the amount of \$334.71 in connection with the assessed filing fees. In this regard, plaintiff states:

In this instance, the prison trust office began deducting the 'Federal Filing Fee' on 05-01-08 after receiving the 'Federal Filing Fee Account Statement [sic] from the 2-10-05 order. Six months that

1 would have concluded on 8-10-2005. And has continued to collect
2 it to the present, for the total of \$334.71.”

3 (Doc. No. 31 at 1-2.) (Exhibit citations omitted).

4 Plaintiff appears to be alleging that the Clerk of Court is authorized only to collect
5 the assessed filing fee for a period of six months. In other words, petitioner is taking issue with
6 the Clerk of the Court making withdrawals over a longer period than six months rather than for
7 making withdrawals in excess of the amount due.

8 Title 28 U.S.C. § 1915 (b)(1)-(b)(2) states:

9 (1) Notwithstanding subsection (a), if a prisoner brings a civil
10 action or files an appeal in forma pauperis, the prisoner shall be
11 required to pay the full amount of a filing fee. The court shall
12 assess and, when funds exist, collect, as a partial payment of any
13 court fees required by law, an initial partial filing fee of 20 percent
14 of the greater of--

15 (A) the average monthly deposits to the prisoner’s account;
16 or

17 (B) the average monthly balance in the prisoner’s account
18 for the 6-month period immediately preceding the filing of
19 the complaint or notice of appeal.

20 (2) After payment of the initial partial filing fee, the prisoner shall
21 be required to make monthly payments of 20 percent of the
22 preceding month’s income credited to the prisoner’s account. The
23 agency having custody of the prisoner shall forward payments from
24 the prisoner’s account to the clerk of the court each time the
25 amount in the account exceeds \$10 until the filing fees are paid.

26 Under this provision, when a prisoner brings a civil action he is required to pay
the full amount of the filing fee. 28 U.S.C. § 1915(b)(1). If the prisoner has had any funds in his
prison account within the six months immediately preceding the commencement of the action,
the court must assess an initial partial filing fee and direct the appropriate agency to collect that
initial partial filing fee from the prisoner’s inmate account and forward it to the court. Id. After
payment of any initial partial filing fee, the prisoner is obligated to make monthly payments as
specified in the statute, with all payments to be collected and forwarded by the appropriate

1 agency until the filing fee is paid in full. See 28 U.S.C. § 1915(b)(2). Plaintiff's assertion that
2 these payments must stop being made, even if the assessed filing fee remains unpaid in full, after
3 six months is incorrect. Rather, withdrawals from the inmate's prison trust account occur until
4 all of the fees are paid, regardless of how much time it may take until the filing fees are paid in
5 full.

6 Attached to plaintiff's motion are copies of his records dated April 14, 2008.
7 These records indicate that plaintiff owed a total of \$150 for his Prison Litigation Reform Act
8 (PLRA) filing fee, in addition to \$255 dollars for his "Appeal PLRA filing fee." (Doc. No. 31 at
9 4.) The balance due from plaintiff totaled \$405. As of April, 2008, plaintiff's account records
10 indicated that he had paid \$35.91 of that total amount due. The court's records indicate that, as
11 of June 24, 2011, plaintiff had paid a total of \$296.72 on his total filing fee obligations and has
12 an outstanding balance of \$108.28 remaining. Since plaintiff is required to pay the outstanding
13 balance in full, the custodian of prisoner's trust account will continue sending available amounts
14 to the court until that remaining balance of \$108.28 has been paid.

15 Accordingly, IT IS HEREBY ORDERED that plaintiff's December 15, 2010
16 motion to modify his filing fee (Doc. No. 31) is denied.

17 DATED: July 18, 2011.

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

21 DAD: ac
22 godinez1273.ord
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